

2013 WL 10545217 (Minn.Dist.Ct.) (Trial Motion, Memorandum and Affidavit)

District Court of Minnesota.

Fourth Judicial District

Hennepin County

STATE OF MINNESOTA, Plaintiff,

v.

Leann Bobleter SARGENT, Defendant.

No. 27-CR-13-3314.

October 31, 2013.

**Memorandum In Support Of State's Upward Departure Motion**

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***INTRODUCTION***

On January 28, 2013, the State filed a Complaint charging LeAnn Bobleter Sargent ("Defendant" herein) with a single count of **Financial Exploitation** of a Vulnerable Adult in excess of \$35,000 pursuant to [Minnesota Statutes 609.2335, subd. 1\(l\)\(ii\)](#) and [609.52, subd. 3\(1\)](#). On July 3, 2013, the State filed its Notice of Intent to Seek an Upward Departure based upon facts that support a finding that Defendant's actions constitute a Major Economic Offense under the Minnesota Sentencing Guidelines. The notice alleges the following grounds:

- (a) The offense involves multiple incidents per victim;
- (b) The offense involved an attempted or actual monetary loss substantially greater than the minimum loss specified in the statute;
- (c) The offense involved a high degree of sophistication or planning or occurred over a lengthy period of time;
- (d) The Defendant used her position or status to facilitate the commission of the offense, including positions of trust, confidence or fiduciary relationship;
- (e) The Defendant has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions.

The facts of this case are described in the Complaint and are incorporated by reference into this Memorandum. The most relevant facts for the purposes of this Memorandum are recited below.

A BrokerCheck Report prepared by the **Financial** Industry Regulatory Authority (FINRA) reveals that Defendant Sargent was previously registered with FINRA as a broker with Princor **Financial** Services, Corp., Hayne, Miller & Farni, Inc. First American National Securities, The Equitable Life Assurance Society of the United States and Equico Securities, Inc. *See*, Exhibit 1. In November, 1993, Defendant signed a Letter of Acceptance, Waiver and Consent to sanctions by the National

Association of Securities Dealers and “to the entry of findings that she misused the funds of a public customer by depositing a \$6,250 check intended for a securities transaction into her personal bank account without the customer's knowledge or consent.” *See*, Exhibit 2.

On July 21, 2008, Defendant's father (Robert E. Bobleter) amended a trust in his name (“The Robert E. Bobleter Trust”) to include Defendant as co-trustee and successor trustee. On that same date, her father signed a Statutory Short Form Power of Attorney granting Defendant all powers listed therein, including the power to conduct transactions relating to real estate, personal property, and banking.

Due to his deteriorating health, Robert Bobleter moved into Defendant's house in February, 2010, and lived there until his death on March 12, 2012. Robert Bobleter entered into a Personal Care Agreement and Room and Board Agreement with Defendant, which would have entitled Defendant to receive \$24,000 in payments from April 2011 until his death in March 2012. However, Defendant paid herself approximately \$26,350 in checks from his account, withdrew approximately \$18,250 in cash from his checking and money market accounts, and took approximately \$6,124 in cash advances against his Visa card.

Furthermore, Defendant used her father's money for personal expenses. These include approximately \$14,794 for purchases from “Handbags by Miche” charged on his credit card, approximately \$4,623 in expenses pertaining to her real estate business paid from his credit card and checking account, approximately \$1,493 in payments from his checking account to Defendant's Discover card, and approximately \$1,714 to his credit card for purchases from two spas.

Finally, Defendant acting as attorney-in-fact took out a \$58,000 mortgage on the family cabin, real property that was to pass not just to Defendant, upon her father's death, but in equal share with her half-brother, Robert Bobleter, Jr. Defendant then used \$38,836.57 of the money to pay off the outstanding mortgage on the victim's residence, a townhouse in Maple Grove. According to the Amended Revocable Living Trust created by the victim in November of 2010, Defendant was to inherit the townhouse, effectively giving herself a nearly \$39,000 payment when the victim died a week after the mortgage and loan funded.

The aggregate total of these various transfers and payments to Defendant exceeds \$112,000, or more than \$88,000 in excess of the \$24,000 that she was entitled to receive.

## **ARGUMENT**

A crime can be classified as a major economic offense if at least two of five factors from a list of enumerated circumstances are present (Minnesota Sentencing Guidelines 2(D)(3)(b)(4)). In this case, there are actually five of the circumstances present. “[T]he offense involved...multiple incidents per victim” (*Id.* at 2(DX3)(b)(4)(a)), “the offense involved...an actual monetary loss greater than the minimum loss specified in the statutes” (*Id.* at 2(D)(3)(b)(4)(b)), “the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time” (*Id.* at 2(D)(3)(b)(4)(c)), Defendant used a “position[] of trust, confidence, or fiduciary relationship []” “to facilitate the commission of the offense” (*Id.* at 2(D)(3)(b)(4)(d)), and “the defendant has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions” (*Id.* at 2(D)(3)(b)(4)(e)).

### **I. Defendant Financially Exploited the Victim, with More Than One Hundred Transactions**

One of the circumstances which can lead to a finding that a crime was a Major Economic Offense is that there are “multiple incidents per victim” (*Id.* at 2(D)(3)(b)(4)(a)). In this case, Defendant **exploited** her father on many, many occasions. She used a combination of checks, cash withdrawals from checking and money market accounts, and cash advances from her father's credit card to pay herself more than *double* what the two agreements entitled her to. She charged money on his credit card to “Handbags by Miche,” used his credit card and checking account to pay her business expenses, and used his checking account to pay off her Discover card. She also used his Visa card to pay for spa treatments. Finally, she took out a mortgage on one

on the family cabin that was to pass, in part, to his son to pay off the outstanding mortgage balance on property she was about to inherit, her father's townhome.

The Court of Appeals has found the “multiple incidents” finding was supported when the evidence showed only seven incidents against a single victim. *State v. Hamer*, 341 N.W.2d 578, 581 (Minn. Ct. App. 1983). In this case, the State has identified over seven different *methods* by which Defendant **exploited** her father. Defendant engaged in over *one hundred* transactions, exclusive of the real estate transaction encumbering the property to be inherited by her brother.

Therefore, this Court should allow the jury to consider whether Defendant's conduct involved multiple incidents against her father.

## II. Defendant's Crime Involved an Actual Monetary Loss More Than Twice the Statutory Minimum.

Another circumstance which can lead to a finding that a crime was a Major Economic Offense is when there is “actual monetary loss greater than the minimum loss specified in the statutes” (*Id.* at 2(D)(3)(b)(4)(b)). In this case, Defendant took over \$112,000 from her father, netting her over \$88,000 above the \$24,000 she was entitled to receive under the Room and Board and Personal Care Agreements. Defendant executed sixteen separate checks to herself from her father's account totaling \$26,350, \$18,250 in cash withdrawals, cash advances in the sum of \$6,124, credit card charges for the purchase of handbags in the sum of \$14,794, \$4,623 in check and credit card payments for her real estate business expenses, \$1,493 in payments to her Discover Card and four payments to New Reflections and Lifetime Spa in the sum of \$1,714. Those sums, together with the money acquired from the loan and mortgage transaction resulted Defendant receiving over \$88,000 in ill-gotten gains.

Defendant's crime caused a loss of significantly more than double the statutory minimum, this Court should allow the jury to consider whether there was an actual monetary loss greater than the statutory minimum,

## III. Defendant's **Exploitation** of Her Father Occurred Over a Lengthy Period Of Time.

Yet another circumstance which can lead to a finding of a Major Economic Offense is if “the offense involved a high degree of sophistication or planning or occurred over a lengthy period of time” (*Id.* at 2(D)(3)(b)(4)(c)). In this case, Defendant's **exploitation** of her father involved over 100 **financial** transactions occurring over the course of a year from April 2011 to March 2012, the last year of his life, when his medical and care needs were profound and escalating.

In 1985, the Court of Appeals upheld a trial court's finding that the offense occurred “over a lengthy period of time” when the offense occurred over nine months from June 1980 through March 1981. *State v. Gould*, 366 N.W.2d 695, 696-96 (Minn. Ct. App. 1985). Since the time period at issue in this case is three months longer than the one in *Gould*, this Court should allow the jury to consider whether the offense occurred over a lengthy period of time.

The offense also involves a high degree of sophistication or planning. As noted above, the Defendant used seven types of transactions to drain her father's **financial** resources and use them for herself or her family. Defendant's acts included over one hundred transactions involving a combination of checks, cash withdrawals or transfers, credit card usage, and finally a real property transaction. Significantly, Defendant engaged in the real estate transaction when her father was near death, and used that transaction to encumber a property that was to pass, in part, to her brother and pay off a mortgage on the property she was to inherit. That transaction alone is evidence of planning and sophistication, and the methodical manner in which she victimized her family.

## IV. Defendant Used Her Fiduciary Relationship With Her Father To Commit Her Offense.

Another circumstance which can lead to a finding that a crime was a Major Economic Offense is if “the defendant used... her position or status to facilitate the commission of the offense, including... fiduciary relationships” (*Id.* at 2(D)(3)(b)(4)(d)). Defendant was able to commit her offense because of the Statutory Short Form Power of Attorney that her father signed which gave her powers to conduct transactions relating to real estate, personal property, and banking (which were the type of transactions she used to **exploit** her father). “A fiduciary relationship is implicit in the creation of a POA [Power of Attorney].” *State v. Campbell*, 756 N.W.2d 263, 271 (Minn. Ct. App. 2008) (citing Minn. Stat. 523.21 (“In exercising any power conferred by [a POA], the attorney-in-fact shall exercise the power in the same manner as an ordinarily prudent person of discretion and intelligence would exercise in the management of the person's own affairs and shall have the interests of the principal utmost in mind.”)). Since an attorney-in-fact owes a fiduciary duty to her agent, this Court should allow the jury to consider whether Defendant used her fiduciary relationship with her father to commit her offense.

It is also significant that the victim's “end of life” was marked by physical, psychological and geographical control by the Defendant. The victim resided with the Defendant from February of 2010 until his death in March of 2012. The victim was literally at the Defendant's mercy for transportation and contact with others outside Defendant and her immediate family members. Defendant was in a position to control Defendant's life as well as his **finances**.

#### **V. Defendant Has Had Professional Sanctions Imposed For Similar Conduct In The Past**

The final circumstance (that is pertinent to this Memorandum) that can lead to finding that a crime is a Major Economic Offense is if “the defendant has been involved in other conduct similar to the current offense as evidenced by...the imposition of professional sanctions” (*Id.* at 2(D)(3)(b)(4)(e)). Defendant's sanctions are for taking funds that she was trusted with as a securities and life insurance broker, for the purposes of a investment and retirement fund transactions, and depositing them into her own personal account. That offense, taking the funds entrusted to her for the care and future of others, and then using them for herself- is the same course of conduct as in the instant offense. As noted above, Defendant has admitted her wrongdoing in this case and was sanctioned by the National Association of Securities Dealers. Therefore, this Court should allow the jury to consider whether Defendant has received professional sanctions for similar conduct in the past.

Since only two of the circumstances are necessary to establish a Major Economic Offense, and five of the circumstances are present here, this Court should allow the jury to consider whether or not this is a Major Economic Offense.

#### **CONCLUSION**

Should the jury find the Defendant guilty of the charge of **Financial Exploitation** of a Vulnerable Adult, they should then also consider whether or not aggravating factors exist. As noted above, those factors include: multiple incidents per victim; monetary loss substantially greater than the minimum loss specified in the statute; a high degree of sophistication or planning or occurred over a lengthy period of time; the Defendant used her position or status to facilitate the commission of the offense, including positions of trust, confidence or fiduciary relationship; and the Defendant has been involved in other conduct similar to the current offense as evidenced by the findings of civil or administrative law proceedings or the imposition of professional sanctions.

The State respectfully moves the Court for the Aggravating Factors to be submitted to the jury, in the event that they determine that Defendant is guilty of the charge of **Financial Exploitation** of a Vulnerable Adult.

Respectfully submitted,

Date: 31 October, 2013

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